



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

APR 26 2012

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Ms. Peterson and Ms. Dascalu-Joffe:

This letter is in response to your letter dated January 26, 2012, where you requested clarification with respect to National Pollutant Discharge Elimination System permitting of wastewater discharges from Flue Gas Desulfurization (FGD) and Coal Combustion Residual (CCR or ash) waste handling systems at steam electric power plants and coal combustion waste landfills.

NPDES permits must include effluent limitations as required by the Clean Water Act (CWA) and implementing regulations. CWA § 301(a) and (b) requires that permits include limitations based on the application of statutorily prescribed levels of treatment (technology-based effluent limitations). Where the EPA has not promulgated technology-based effluent guidelines for a particular class or category of industrial discharger, or where the technology-based effluent guidelines do not apply to all waste streams or pollutants discharged by the industrial discharger, the permitting authority must establish technology-based effluent limitations on a case-by-case basis in individual NPDES permits, based on its best professional judgment or "BPJ." See CWA section 402(a)(1)(B).

On June 7, 2010, the EPA issued guidance entitled *National Pollutant Discharge Elimination System (NPDES) Permitting of Wastewater Discharges from Flue Gas Desulfurization and Coal Combustion Residuals Impoundments at Steam Electric Power Plants*. As described in Appendix A of that guidance, the applicable Steam Electric Power Generating effluent limitations guidelines and standards promulgated in 1982 did not establish BAT for the FGD wastestream. Thus, technology-based effluent limitations established on a BPJ basis to address FGD wastewater at steam electric power plants are required. To assist in the development of such limitations, the guidance mentioned above provides state permitting authorities with relevant information.

Additionally, the record for the 1982 effluent limitations guidelines indicates that BAT was not established for priority pollutants contained in fly ash or bottom ash transport water in the final



rule. These waters often combine with FGD wastewater and flow through, and eventually discharge, from CCR impoundments. Thus, BAT-based limitations would currently need to be established on a BPJ-basis for CCR-related discharges from sources such as FGD, fly ash or bottom ash transport water. Appropriate technology-based limitations are needed for these discharges to comply with CWA § 301(a) and (b) and applicable Federal regulations at 40 CFR § 125.3 (applicable to State NPDES permit programs per 40 CFR § 123.25).

At your request, we have reviewed the eight permits submitted as attachments to your letter. Based on that review, none of the permits for the steam electric facilities<sup>1</sup> appear to include technology-based effluent limitations other than those included in the existing Steam Electric Effluent Limitations Guidelines. Based on our review of the information you provided, it does not appear that the Maryland Department of the Environment (MDE) examined potential priority pollutants expected to be present in the discharge from FGD wastewater or CCR impoundments in order to establish appropriate BPJ technology-based limitations as required by CWA § 301(a)(1) and applicable Federal regulations at 40 CFR 125.3 (applicable to State NPDES permit programs per 40 CFR 123.25).

With respect to discharges from landfills, EPA has promulgated effluent limitations guidelines applicable to certain landfills at 40 CFR Part 445. Those guidelines do not apply to the discharge of landfill leachate generated at a landfill that is associated with an industrial or commercial operation, i.e., "captive" landfills. EPA assumes that the Faulkner coal combustion waste landfill and the Mirant Maryland Ash Management are such captive landfills. As explained above, in the case of wastewater sources that are not subject to existing effluent limitations guidelines and standards, the NPDES permitting authority must impose limitations on discharges of such wastewater that are developed on a case-by-case, BPJ basis. Because EPA only reviewed the information provided by you, which did not include the permit fact sheets, the basis for the limitations in the permits is unclear; however, the permits appear to contain BPJ-based limitations for TSS and Iron only. Based on our review of the information you provided, EPA is unable to determine whether MDE examined other potential pollutants expected to be present in the discharge from the landfill to establish appropriate BPJ technology-based limitations as required by CWA § 301(a)(1) and applicable Federal regulations at 40 CFR 125.3 (applicable to State NPDES permit programs per 40 CFR 125.25).

We note that six of the permits that were provided to us for review appear to be final permits and two of the permits, which do not include effective dates, appear to be draft permits. In developing permits for reissuance or modification, the Maryland Department of the Environment should consider the guidance and the requirements of CWA § 301.

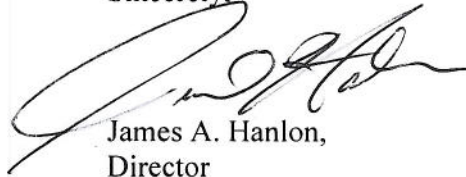
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<sup>1</sup> Permits reviewed include: Constellation Power Sources, Fort Smallwood Complex, MD0001503, Effective May 1, 2009; Mirant Mid-Atlantic, Chalk Point Station, MD0002658, Effective July 1, 2009; Mirant Mid-Atlantic, Dickerson Station, MD 0002640A, draft 2009; Mirant Mid-Atlantic, Morgantown Station, MD0002674, draft 2009; Allegheny Energy, R. Paul Smith Station, MD0000582, Effective October 1, 2010; Mirant Maryland Ash Management, Brandywine, MD0054836; Potomac Electric, Faulkner Ash Landfill, MD0056928, Effective February 1, 1997; and Constellation Power, C.P. Crane Station, MD0001511, Effective July 1, 2010.



Should you have any questions, please contact Marcus Zobrist, Chief of the Industrial Branch at 202-564-8311 or [Zobrist.Marcus@epa.gov](mailto:Zobrist.Marcus@epa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Hanlon', written over the printed name.

James A. Hanlon,  
Director

Office of Wastewater Management

Cc: Edwal Stone, Maryland Department of the Environment  
Evelyn MacKnight, EPA R3 Water Protection Division